

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ROBERT K. JIMENEZ,

Plaintiff,

v.

BENNY'S, INC., et al.,

Defendants.

Civil Action No. 14-10311-MLW

REPORT AND RECOMMENDATION ON DEFENDANT'S MOTION TO DISMISS

[Docket No. 14]

January 22, 2015

Boal, M.J.

Plaintiff Robert K. Jimenez alleges that he was injured when a bicycle he purchased from one of defendant Benny's, Inc.'s department stores malfunctioned, causing him to lose control and crash. Amended Complaint (Docket No. 9-3) ("AC") at ¶¶ 8, 9. He also alleges that the bicycle was imported and/or distributed by defendant Kent International, Inc. AC ¶ 8. Jimenez' Amended Complaint contains three counts: negligence as to Benny's (Count I); res ipsa loquitor as to Benny's (Count II); and negligence as to Kent International (Count III). Benny's has moved to dismiss Count II of the Amended Complaint. Docket No. 14.<sup>1</sup> For the following reasons, this Court recommends that the District Court grant Benny's motion.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter,

<sup>1</sup> On January 5, 2015, the District Court referred this case to the undersigned for full pretrial management, including dispositive motions. Docket No. 20.